

UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKETS

2008 MAR 26 P 2:09

IN THE MATTER OF

TRANSLAND, INC.
BRIAN WILSON
CHARLES ROBERTS
CHRISTOPHER CARTER
JAMES DEJONGE
MICHAEL SLAUGHTER
ALFONSO GONZALES

DOCKET NOS. FMCSA-2006-25348, 25349
25350, 25351, 25352, 25353, and 25354
(Federal Motor Carrier Safety Administration)

FIELD ADMINISTRATOR'S RESPONSE TO PRE-HEARING ORDER

The Field Administrator, Federal Motor Carrier Safety Administration ("Field Administrator"), through his undersigned counsel, hereby responds to the February 25, 2008 Order of the Chief Administrative Law Judge in the above-captioned matters. The Field Administrator acknowledges that the issues, facts, and witnesses currently anticipated in the hearing of these matters may change throughout the course of discovery and therefore requests that the disputed issues and facts, and witness list, may be amended and supplemented until the date upon which dispositive motions are due.

STATEMENT OF ISSUES

The Field Administrator will raise the following issues at the hearing of this matter:

1. Whether Transland waived the issue of the validity of the subpoena issued by the FMCSA Missouri Division by complying with the subpoena's demands, instead of refusing to do so and awaiting agency enforcement?

2. Whether Transland violated 49 C.F.R. §395.8(e) on 118 separate occasions by maintaining false reports of driver Records of Duty Status ("RODS")?
3. Whether driver Brian Wilson made a false report of duty activities on his RODS for September 14, 2005?
4. Whether driver Charles Roberts made a false report of duty activities on his RODS for September 5, 2005?
5. Whether driver Christopher Carter made a false report of duty activities on his RODS for September 2, 2005?
6. Whether driver James DeJonge made a false report of duty activities on his RODS for March 17, 2005?
7. Whether driver Michael Slaughter made a false report of duty activities on his RODS for September 5, 2005?
8. Whether driver Alfonso Gonzales made a false report of duty activities on his RODS for September 3, 2005?¹

LIST OF DISPUTED FACTS CONCERNING EACH ISSUE

Issue No. 1. There are no disputed facts with regard to whether Transland waived the issue of the validity of the subpoena issued by the FMCSA Missouri Division by complying with the subpoena's demands, instead of refusing to do so and awaiting agency enforcement. Issue No. 1 is a dispute over an issue of law.

Issues No. 2 through 8. The facts in dispute overlap with respect to whether Transland maintained false reports of records of duty status and whether the drivers made false reports of duty activities. The issues center on whether Transland, Inc. and the drivers violated the Federal Motor Carrier Safety Regulations.

¹ Drivers Brian Wilson, Charles Roberts, Christopher Carter, James DeJonge, Michael Slaughter, and Alfonso Gonzales are collectively referred to herein as the "drivers."

Transland, Inc. and the drivers have taken the position in earlier pleadings that Transland, Inc. provided the Safety Investigator sufficient hard-copy documentation to determine compliance with the regulations during the Compliance Review, and therefore, the Safety Investigator failed to comply with the FMCSA's Field Operations Training Manual ("FOTM") when he requested or demanded production of Global Positioning System ("GPS") records. The Field Administrator's position, however, is that "[t]he critical question is in this case is whether the Respondent[s] violated the Motor Carrier Safety Regulations." *In re B & J Transportation, Inc.*, FMCSA-2001-10358 (Order Denying Motion for Reconsideration and Motion for Leave to Take Interlocutory Appeal, September 1, 2006). The FOTM is neither relevant nor material because it cannot provide "admissible evidence to delineate what the Respondent[s] did or did not do." *In re Swift Transportation Co., Inc.*, FMCSA-2001-10674 (Order Respecting the Field Operations Training Manual, January 12, 2007), citing *Schweiker v. Hansen*, 450 U.S. 785, 789 (1981) (per curiam) (contents of agency manual are not regulations, have no legal force, and do not bind the agency). See also *Aulenback v. Federal Highway Administration*, 103 F.3d 156, 168-69 (1997). The issues of fact to be resolved are:

1. Whether Transland, Inc. maintained false reports of records of duty status on 118 separate occasions, when the GPS records for each of these instances showed that the vehicle was a considerable distance from the location entered in the driver's RODS. Each of the 118 alleged violations is detailed in the Statement of Charges attached to the April 11, 2006 Notice of Claim served on Transland, Inc.

2. Whether driver Brian Wilson made a false report of duty activities on his RODS for September 14, 2005, when the RODS shows sleeper berth/off-duty from 0200-1430 CST at Catlettsburg, KY, while the GPS records show that his vehicle was in Gilbertsville, KY at 0321 CST (358 miles or 5 hours 44 minutes from Catlettsburg, KY)?

3. Whether driver Charles Roberts made a false report of duty activities on his RODS for September 5, 2005, when the RODS shows sleeper berth from 2100-2400 CST at Fort Worth, TX, while the GPS records show that his vehicle was in Muskogee, OK at 2117 CST (262 miles or 4 hours 51 minutes from Fort Worth, TX)?

4. Whether driver Christopher Carter made a false report of duty activities on his RODS for September 2, 2005, when the RODS shows sleeper berth from 0001-0800 CST at Big Springs, NE, while the GPS records show that his vehicle was in Lincoln, NE at 0728 CST (292 miles or 3 hours 57 minutes from Big Springs, NE)?

5. Whether driver James DeJonge made a false report of duty activities on his RODS for March 17, 2005, when the RODS shows off-duty from 2015-2400 CST at Massillon, OH, while the GPS records show that his vehicle was in Toledo, OH at 2030 CST (153 miles or 2 hours 57 minutes from Massillon, OH)?

6. Whether driver Michael Slaughter made a false report of duty activities on his RODS for September 5, 2005, when the RODS shows sleeper berth from 1045-1530 CST at Oakgrove, KY, while the GPS records show that his vehicle was in Poplar Bluff, MO at 1156 CST (186 miles or 3 hours 28 minutes from Oakgrove, KY)?

7. Whether driver Alfonso Gonzales made a false report of duty activities on his RODS for September 3, 2005, when the RODS shows sleeper berth from 1345-2400 CST at Big Cabin, OK, while the GPS records show that his vehicle was in Wichita, KS at 1930 CST (187 miles or 3 hours 45 minutes from Big Cabin, OK)?

PROPOSED WITNESS LIST AND SUMMARY OF TESTIMONY

The Field Administrator anticipates that the following witnesses will be called to testify in his portion of the hearing of this matter. As discovery is ongoing, the Field Administrator requests that the parties be allowed to provide the names of additional witnesses, as discovered, until the close of Discovery:

1. Garth Lantz, Safety Program Manager, Federal Motor Carrier Safety Administration, Midwestern Service Center. It is anticipated that this witness will testify regarding FMCSA practices and procedures, FMCSA regulations and their application, his performance of the compliance review that led to the issuance of the Notices of Claim in these cases, Respondents' compliance or noncompliance with the Federal Motor Carrier Safety Regulations, and regarding those facts in dispute between the parties of which he has personal knowledge.

2. Joseph R. Boyd, Division Administrator, Missouri Division, Federal Motor Carrier Safety Administration. It is anticipated that this witness will testify regarding FMCSA practices and procedures, FMCSA regulations and their application, Respondents' compliance or noncompliance with the Federal Motor Carrier Safety Regulations, and regarding those facts in dispute between the parties of which he has personal knowledge.

PROPOSED PROCEDURAL SCHEDULE

The Field Administrator proposed the following schedule.

Written Discovery Filed:	May 16, 2008
Discovery Completed:	August 29, 2008
Exchange of Exhibits:	September 26, 2008
Stipulations:	October 31, 2008
Dispositive Motions:	December 5, 2008

STATUS OF SETTLEMENT EFFORTS

The parties have discussed settlement. Given the Respondents' unwillingness to admit the violations, the Field Administrator believes that settlement is unlikely.

HEARING LOCATION AND JUSTIFICATION

The Field Administrator proposes that the hearing be held in the Washington DC headquarters of the U.S. Department of Transportation, located at 1200 New Jersey Avenue, S.E., Washington DC 20590. This building is conveniently located near the Navy Yard Metro Rail Station (accessible by Metro Rail from Ronald Reagan National Airport), and has available conference rooms and a hearing room.

PREVIOUS FILINGS

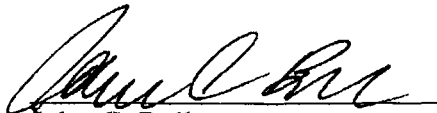
Attached please find one copy of the following documents:

1. Notice of Claim -- Transland, Inc.
2. Notice of Claim -- Brian Wilson
3. Notice of Claim -- Charles Roberts
4. Notice of Claim -- Christopher Carter
5. Notice of Claim -- James DeJonge
6. Notice of Claim -- Michael Slaughter
7. Notice of Claim -- Alfonso Gonzales
8. Respondent Transland, Inc.'s Reply to the Notice of Claim
9. Respondent Brian Wilson's Reply to the Notice of Claim

10. Respondent Charles Roberts's Reply to the Notice of Claim
11. Respondent Christopher Carter's Reply to the Notice of Claim
12. Respondent James DeJonge's Reply to the Notice of Claim
13. Respondent Michael Slaughter's Reply to the Notice of Claim
14. Respondent Alfonso Gonzales's Reply to the Notice of Claim
15. Field Administrator's Objections to Respondent Transland, Inc.'s Request for Hearing
16. Field Administrator's Objections to Respondent Brian Wilson's Request for Hearing
17. Field Administrator's Objections to Respondent Charles Roberts's Request for Hearing
18. Field Administrator's Objections to Respondent Christopher Carter's Request for Hearing
19. Field Administrator's Objections to Respondent James DeJonge's Request for Hearing
20. Field Administrator's Objections to Respondent Michael Slaughter's Request for Hearing
21. Field Administrator's Objections to Respondent Alfonso Gonzales's Request for Hearing
22. Reply to Field Administrator's Objections to Respondent Transland, Inc.'s Request for Hearing
23. Reply to Field Administrator's Objections to Respondent Brian Wilson's Request for Hearing
24. Reply to Field Administrator's Objections to Respondent Charles Roberts's Request for Hearing
25. Reply to Field Administrator's Objections to Respondent Christopher Carter's Request for Hearing
26. Reply to Field Administrator's Objections to Respondent James DeJonge's Request for Hearing
27. Reply to Field Administrator's Objections to Respondent Michael Slaughter's Request for Hearing
28. Reply to Field Administrator's Objections to Respondent Alfonso Gonzales's Request for Hearing
29. Supplemental Reply to Field Administrator's Objections to Respondent Transland, Inc.'s Request for Hearing
30. Combined Motion for Summary Judgment and Memorandum in Support -- Transland, Inc.
31. Combined Motion for Summary Judgment and Memorandum in Support -- Brian Wilson
32. Combined Motion for Summary Judgment and Memorandum in Support -- Charles Roberts

33. Combined Motion for Summary Judgment and Memorandum in Support – Christopher Carter
34. Combined Motion for Summary Judgment and Memorandum in Support – James DeJonge
35. Combined Motion for Summary Judgment and Memorandum in Support – Michael Slaughter
36. Combined Motion for Summary Judgment and Memorandum in Support – Alfonso Gonzales
37. Motion for a Continuance – Transland Inc.
38. Motion for a Continuance – Brian Wilson
39. Motion for a Continuance – Charles Roberts
40. Motion for a Continuance – Christopher Carter
41. Motion for a Continuance – James DeJonge
42. Motion for a Continuance – Michael Slaughter
43. Motion for a Continuance – Alfonso Gonzales
44. Notice of Appearance
45. Notice of Change of Address
46. Motion for Stay
47. Notice of Appearance and Change of Address
48. Motion to Strike and Deny Respondent's Motion for Stay
49. Order Appointing Administrative Law Judge
50. Notice of Substitution of Counsel²

Respectfully submitted,



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² The Notices of Claim and Replies to the Notices of Claim (identified as 1-14 above) were not separately filed as pleadings in this matter. These documents, however, were included as attachments to later pleadings. The Notices of Claim and Replies thereto set forth the basis of the Field Administrator's claims and the Respondents' defenses. For ease of reference, therefore, the Field Administrator has provided copies of these documents here, separated from the pleadings to which they were later attached.

CERTIFICATE OF SERVICE

This is to certify that on the 26 day of March 2008, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to:

The Honorable Ronnie A. Yoder
Chief Administrative Law Judge
Office of Hearings, M-20
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
East Building, Ground Floor
Room E12-320
Washington DC 20590
Chief Administrative Law Judge

Three Copies
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Original
Hand Delivered


Potchanee Ritzel